

AN ACT

ENTITLED, An Act to revise certain provisions regarding the performance of abortions on unemancipated minors and those found to be incompetent.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 34-23A-7 be amended to read as follows:

34-23A-7. No abortion may be performed upon an unemancipated minor or upon a female for whom a guardian has been appointed because of a finding of incompetency, until at least forty-eight hours after written notice of the pending operation has been delivered in the manner specified in this section. The notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent. In lieu of such delivery, notice may be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and restricted delivery to the addressee, which means a postal employee can only deliver the mail to the authorized addressee. If notice is made by certified mail, the time of delivery shall be deemed to occur at twelve noon on the next day on which regular mail delivery takes place, subsequent to mailing.

No notice is required under this section if:

- (1) The attending physician certifies in the pregnant unemancipated minor's medical record that, on the basis of the physician's good faith clinical judgment, a medical emergency exists and there is insufficient time to provide the required notice. Unless the unemancipated minor gives notice of her intent to seek a judicial waiver, a good faith effort shall be made by the attending physician or the physician's agent to verbally inform the parent within twenty-four hours after the performance of the emergency abortion, that an emergency abortion was performed on the unemancipated minor and shall also be sent a written notice, in the manner described in this section, of the performed emergency

abortion. If the unemancipated minor, upon whom an emergency abortion was performed, elects not to allow the notification of her parent, any judge of a circuit court shall, upon petition, or motion, and after an appropriate hearing, authorize the waiving of the required notice of the performed abortion if the judge determines, by clear and convincing evidence that the unemancipated minor is mature and capable of determining whether notification should be given, or that the waiver would be in the unemancipated minor's best interest; or

- (2) The person who is entitled to notice certifies in writing that the person has been notified. The certification is valid only if the signature has been notarized. If the person does not provide a notarized signature, the person shall be sent a written notice as described in this section. No abortion as described in this section may be performed until at least forty-eight hours after written notice of the pending operation has been delivered in the manner specified in this section; or
- (3) A pregnant female elects not to allow the notification of her parent, in which case, any judge of a circuit court shall, upon petition, or motion, and after an appropriate hearing, authorize a physician to perform the abortion if the judge determines, by clear and convincing evidence, that the pregnant female is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the pregnant female is not mature, or if she does not claim to be mature, the judge shall determine, by clear and convincing evidence, whether the performance of an abortion upon her without notification of her parent would be in her best interests and shall authorize a physician to perform the abortion without such notification if the judge concludes that her best interests would be served thereby.

Section 2. That § 34-23A-7.1 be amended to read as follows:

34-23A-7.1. In any proceeding pursuant to subdivision 34-23A-7(1) or 34-23A-7(3), the pregnant female may participate in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for her. The court shall, however, advise her that she has a right to court-appointed counsel and shall, upon her request, provide her with such counsel. Proceedings in the court under subdivision 34-23A-7(1) or 34-23A-7(3) shall be confidential and shall be given such precedence over other pending matters so that the court may reach a decision promptly and without delay so as to serve the best interests of the pregnant female. A judge of the court who conducts proceedings under subdivision 34-23A-7(1) or 34-23A-7(3) shall make in writing specific factual findings and legal conclusions supporting the decision and shall order a record of the evidence to be maintained including the judge's own findings and conclusions.

An expedited confidential appeal shall be available to any such pregnant female for whom the court denies an order authorizing an abortion without notification. An order authorizing an abortion without notification is not subject to appeal. No filing fees are required of any such pregnant female at either the trial or the appellate level. Access to the trial court for the purposes of such a petition or motion, and access to the appellate courts for purposes of making an appeal from denial of the same, shall be afforded such a pregnant female twenty-four hours a day, seven days a week. Notwithstanding any other provision of law, all pleadings, papers, and other documents filed pursuant to this section are confidential, are not public records, and are not open for inspection by any member of the public for any purpose.

Section 3. That subdivision (4) of § 34-23A-1 be amended to read as follows:

- (4) "Parent," one parent or guardian of the pregnant minor or the guardian or conservator of the pregnant female;

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I certify that the attached Act
originated in the

SENATE as Bill No. 193

Secretary of the Senate
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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 193
File No. _____
Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor
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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State